

FILED*11 JUN 2 16:01USDC-ORN

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

RONALD BRUCE ELLIS,

Petitioner,

Civil No. 11-460-CL

v.

REPORT AND
RECOMMENDATION

CITY OF PORTLAND,

Respondent.

CLARKE, Magistrate Judge.

Petitioner filed a petition under 28 U.S.C. § 2254 challenging his convictions for Forgery and Identity Theft on the grounds that 1.) "habeas corpus not filed by my attorney," and 2.) "Amd IV, writ of search was defective and a theft took place by Portland Police Officers." Petition (#1), p. 8. Petitioner alleges that he was sentenced to 13 month imprisonment on March 29, 2011.

By Order (#4) entered May 18, 2011, petitioner was advised of the exhaustion of state remedies requirement under 28 U.S.C. § 2254(b) and allowed 30 days to show cause in writing why his petition should not be for failure to exhaust state remedies.

Petitioner's response to the court's show cause order (#6) only confirms that petitioner has not completed the state appeals process or otherwise exhausted available state remedies with respect to his claims. Petitioner has not alleged any cause or prejudice for his failure to exhaust or established that he is entitled to the fundamental miscarriage of justice exception to the exhaustion requirement.

Therefore, petitioner's Petition (#2) should be denied without prejudice. This proceeding should be dismissed.

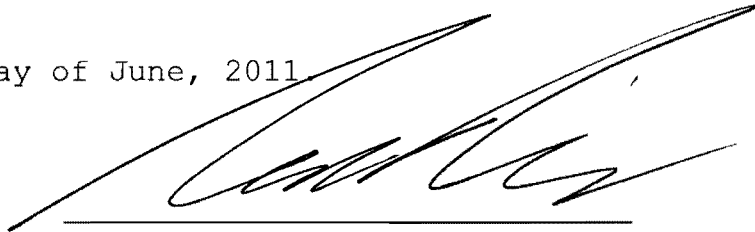
This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo

consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

Certificate of Appealability

Should petitioner appeal, a certificate of appealability should be denied as petitioner has not made a substantial showing of the denial of a constitutional right. See, 28 U.S.C. § 2253(c) (2).

DATED this 2 day of June, 2011.

A handwritten signature in black ink, appearing to read 'Mark D. Clarke', is written over a horizontal line.

Mark D. Clarke
United States Magistrate Judge